**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929**

**CRP. No. 686 of 2007()**
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**AGAINST THE ORDER DATED 26/03/2007 IN EP 616 OF 2005 IN OS.364/2001 of II ADDL.SUB COURT,THRISSUR**

**.....**

**REVN. PETITIONER: RESPONDENT NO.2/JUDGMENT DEBTOR 3:**
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**K.T. MADHAVAN NAMBISSAN,**
**S/O. KESAVAN NAMBISSAN, 'MADHAVAM',**
**IRIINGAPRAM AMSOM, THIRUVENKITAM DESOM,**
**CHAVAKKAD TALUK.**

**BY ADV. SRI.P.RAMACHANDRAN**

**RESPONDENTS: PETITIONER-DECREE HOLDER:**
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**ATHIRA FINANCE (P) LTD.,**
**REPRESENTED BY ITS PRESENT MANAGING DIRECTOR,**
**K.T. RADHAKRISHNAN, S/O. SAVITHRI BRAHMANI AMMA,**
**AMBADY NIVAS, GURUVAYOOR AMSOM AND DESOM,**
**CHAVAKKAD TALUK.**

**BY**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**M.N. KRISHNAN, J.**

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**C.R.P. NO. 686 OF 2007**

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**Dated this the 24th day of July, 2007.**

**O R D E R**

This revision petition is preferred against the order of the learned Subordinate Judge, Thrissur in E.P.616/05 in O.S.364/01. The 2nd respondent in the E.P. has come forward with this revision. The contention is that he is running a dairy under the name and style of Nambissan's dairy and therefore he is having sufficient means to pay and he is not making payment. But the revision petitioner has totally denied the same and he would submit it is not conducted by him but by his brother. According to him he was having some business at Madras which has been closed down and there is no means. Unfortunately, the Court below had believed the oral evidence of PW1 and had cast the burden of proof on the judgment debtor to prove negative and had ordered arrest. This is unfortunate. Under Section 51 of CPC the judgment debtor has means or has had means after the passing of the decree is a fact to be established by the creditor/ decree holder and not otherwise. So, the order

requires interference and therefore the order passed against the present revision petitioner, namely the 2nd respondent in the E.P. is set aside and the matter is remitted back to the Court below for fresh consideration in accordance with law after affording equal opportunities to both sides to adduce evidence in support of their respective contentions. The Court below is directed to issue notice to the decree holder calling upon him to produce evidence in support of this contention. The judgment debtor is directed to appear before Court on 23.8.2007 and on that day the Court may fix a date for appearance of the parties. I have taken a similar view in an earlier CRP in 508/07 with respect to the same judgment debtor.

The C.R.P. is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

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